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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 76

UNITED STATES OF AMERICA, PETITIONER

v.

STEPHEN ROBERT DEMKO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The United States District Court for the Western District of Pennsylvania did not render an opinion. The opinion of the court of appeals (R. 25–31) is reported at 350 F. 2d 698.

JURISDICTION

The judgment of the court of appeals was entered on September 21, 1965 (R. 33). On December 14, 1965, Mr. Justice Brennan extended the time for filing a petition for a writ of certiorari to and including February 18, 1966 (R. 35). The petition was filed on February 17, 1966, and was granted on April 4,

1966 (383 U.S. 966). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a federal prisoner eligible for workmen's compensation benefits from the United States under 18 U.S.C. 4126 because of injuries incurred in the course of his assigned prison employment has an additional remedy against the United States under the Federal Tort Claims Act to recover for such injuries.

STATUTE INVOLVED

The pertinent provisions of 18 U.S.C. 4126 are as follows:

> All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the General Accounting Office.
>
> * * * * * *
>
> The corporation, in accordance with the laws generally applicable to the expenditures of the several departments and establishments of the government, is authorized to employ the fund, and any earnings that may accrue to the corporation, * * * in paying, under rules and regulations promulgated by the Attorney General, * * * compensation to inmates or their dependents for injuries suffered in any industry

or in any work activity in connection with the maintenance or operation of the institution where confined. In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act.

STATEMENT

In 1962 respondent was an inmate of the federal penitentiary at Lewisburg, Pennsylvania, where he was required to do work in connection with the maintenance of the prison. He was injured in the performance of an assigned prison task.

Under 18 U.S.C. 4126, Congress has authorized the payment of workmen's compensation benefits "to inmates or their dependents for injuries suffered in any [prison] industry or in any work activity in connection with the maintenance or operation of the institution where confined." Such payments are to be made in accordance with "rules and regulations promulgated by the Attorney General."[1] Pursuant to those regulations,[2] respondent filed a formal claim for an award of compensation benefits on account of the injuries he had received. After his claim of

[1] The regulations governing awards of workmen's compensation to federal prisons were initially promulgated in 1937, 40 C.F.R. §§ 1.1–1.10 (1st ed. 1939), and now appear, unchanged, at 28 C.F.R. §§ 301.1–301.10 (1966 Rev.). For the benefit of the inmates, in 1962 a comprehensive explanation of the regulations was prepared and distributed in a pamphlet entitled "Inmate Accident Compensation Regulations." That pamphlet was referred to by the courts below and is included in the record (R. 13–19). See *Granade* v. *United States*, 356 F. 2d 837, 843, n. 10 (C.A. 2).

[2] 28 C.F.R. § 301.7; Compensation Pamphlet, ¶¶ 5, 6.

physical disability from that accident was verified by a medical examination[3] and approved by the designated officials in Washington, D.C.,[4] respondent was awarded $180.00 per month in compensation benefits under 18 U.S.C. 4126 (R. 6–8).[5] Those benefits were payable commencing the first of the month following his release from prison and will continue to be paid so long as his disability persists.[6] Prior to his discharge, respondent was afforded necessary medical, surgical and hospital care without charge.[7] The cost of any future medical attention required for the injuries respondent incurred in prison will similarly be borne by the government under the Inmate Compensation program.[8]

In 1963 respondent commenced this suit under the Federal Tort Claims Act[9] to recover damages from the United States for the injuries that were the basis of the compensation award, on the ground that they were the result of negligence on the part of federal

[3] Compensation Pamphlet, ¶ 5.

[4] Compensation Pamphlet, ¶ 6.

[5] 18 U.S.C. 4126 provides that: "In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act." At the time of the award in suit, that Act (5 U.S.C. (1964 ed.) 756(c)) fixed $180.00 per month as the minimum award to a federal employee who suffered a permanent or temporary total disability in the course of his government employment.

[6] 28 C.F.R. § 301.2. Had respondent been injured while engaged in a paid prison work assignment, he would have continued to be paid his wages while he was disabled so long as he remained in prison. 28 C.F.R. § 301.1.

[7] Compensation Pamphlet, ¶ 2.

[8] 28 C.F.R. § 301.8.

[9] 28 U.S.C. 1346(b), 2671 *ff.*

prison officials. The district court rejected the sole defense tendered by the government—that respondent's right to workmen's compensation benefits under 18 U.S.C. 4126 was his exclusive remedy and precluded recovery under the Federal Tort Claims Act (R. 10–11). The parties then entered into a stipulation which admitted the negligence of government employees, agreed that $20,000 in addition to present and future compensation benefits would adequately compensate respondent for his injuries, and provided that respondent was entitled to a judgment awarding that sum in view of the district court's rejection of the government's sole defense. The stipulation preserved, however, the government's right to litigate on appeal the issue of the exclusiveness of the compensation remedy (R. 11–12).[10] Based on that stipulation the district court entered a judgment of $20,000 in favor of respondent on July 13, 1964 (R. 13).

On April 9, 1965, the court of appeals affirmed (R. 25), relying principally on *United States* v. *Muniz,* 374 U.S. 150, which held that an individual's status as a federal prisoner did not in itself bar him from bringing suit under the Federal Tort Claims Act. Although neither prisoner involved in *Muniz* was eligible for compensation benefits under 18 U.S.C. 4126 because neither was injured in the course of employment, the Third Circuit read this Court's *Muniz*

[10] The stipulation further provided that respondent's "right to compensation pursuant to 18 U.S.C. 4126 is not affected by this suit. Regardless of the outcome of this suit the plaintiff will have the same right to compensation as if suit had not been instituted" (R. 12).

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decision as establishing that a federal prisoner's right to sue would not be barred by the availability of a federal compensation remedy in the absence of express statutory language to that effect (R. 27–28). The court below rejected the government's argument, based on *Johansen* v. *United States,* 343 U.S. 427, and *Patterson* v. *United States,* 359 U.S. 495, that where Congress has authorized a remedy in the nature of workmen's compensation, such remedy is presumed to be exclusive even without an explicit statutory declaration to that effect. In the Third Circuit's view, the compensation remedy established under 18 U.S.C. 4126 was not a sufficiently "comprehensive" system to warrant the presumption that it was intended to be exclusive.

Following the Third Circuit's decision in the case at bar, the Second Circuit, on February 9, 1966, reached precisely the opposite result in *Granade* v. *United States,* 356 F. 2d 837,[11] holding a federal inmate injured in prison employment to be restricted to redress under 18 U.S.C. 4126 for such injuries. After observing that the question of a dual tort-compensation remedy for prisoners had not been before this Court in *Muniz,* the Second Circuit stated (356 F. 2d at 842):

> [T]he teaching of *Johansen* and *Patterson* has been consistently applied to foreclose suit under

[11] Petition for certiorari filed May 9, 1966 (No. 172 Misc., Oct. Term, 1966). In a responsive memorandum filed on May 18, 1966, the Solicitor General indicated that, although regarding the decision of the Second Circuit in *Granade* as correct, he would not oppose the grant of certiorari in view of the pendency of the present case.

> the Federal Tort Claims Act by federal employees who are eligible for benefits under federal compensation schemes. We cannot believe that *Muniz* holds that, when federal employees are not allowed to pursue both remedies, federal prisoners may bring actions under the Federal Tort Claims Act even though they are also eligible for compensation benefits.

The Second Circuit also noted and rejected the Third Circuit's conclusion that the prisoner compensation system was not sufficiently comprehensive to justify the normal presumption that Congress intended it to be the exclusive remedy against the government. 356 F. 2d 842–844.

SUMMARY OF ARGUMENT

I

Workmen's compensation legislation has been widely adopted as a desirable substitute for the common law negligence action for injuries received at work. In place of the delays, uncertainties and legal expenses of tort litigation, compensation remedies provide injured workmen with a guarantee against sudden loss of income without regard to questions of fault or contributory negligence. And, where adopted, compensation has been recognized as the exclusive remedy for injuries within its coverage. The general rule of exclusivity has been held by this Court to warrant a presumption of legislative intent in relating federal compensation statutes to other remedies against the government. *Johansen* v. *United States,* 343 U.S. 427; *Patterson* v. *United States,* 359 U.S.

495. The courts of appeals have applied that exclusivity rule uniformly, not only with respect to the Federal Employees' Compensation Act involved in *Johansen* and *Patterson,* but to all similar federal legislation protecting employees not covered by the Compensation Act. See, *e.g., United States* v. *Forfari,* 268 F. 2d 29 (C.A. 9), certiorari denied, 361 U.S. 902; *Aubrey* v. *United States,* 254 F. 2d 768 (C.A.D.C.); *Lowe* v. *United States,* 292 F. 2d 501 (C.A. 5); *Lewis* v. *United States,* 190 F. 2d 22 (C.A.D.C.), certiorari denied, 342 U.S. 869. Since all other compensation remedies provided by the federal government for employees injured at work have been construed to be exclusive of other relief, there is no rational basis for carving out an exception to that rule for the sole benefit of federal prisoners.

II

The court of appeals erred in assuming that, had Congress intended the workmen's compensation remedy for federal prisoners under 18 U.S.C. 4126 to be exclusive, it would have provided so expressly. First, in *Johansen* and *Patterson* this Court found compensation remedies to be exclusive even absent a congressional declaration to that effect. Second, workmen's compensation for prisoners was first authorized in 1934, long before any tort remedy was available. As the Court noted in *Johansen* (343 U.S. 427, 433) the absence of any assertion of exclusivity in the Federal Employees' Compensation Act of 1916 was an "understandable" omission since, when the statute was enacted it was the only, and therefore the exclusive,

remedy available against the United States. Third, when 18 U.S.C. 4126 was expanded in 1961 to encompass all work injuries, not merely those incurred by employees of prison industries, the lower federal courts had uniformly held that prisoners had no remedy under the Federal Tort Claims Act of 1946. It was not until 1963 that this Court finally held to the contrary in *United States* v. *Muniz,* 374 U.S. 150. The legislative history of the 1961 amendment of Section 4126 makes clear that Congress assumed it was affording a remedy in an area where none existed. In short, nothing in the background of 18 U.S.C. 4126 indicates any congressional intent to depart from "the principle of the exclusive character of federal plans for compensation" affirmed by the court in *Johansen* v. *United States,* 343 U.S. at 440, and *Patterson* v. *United States,* 359 U.S. 495.

III

There is nothing in *United States* v. *Muniz,* 374 U.S. 150, to warrant a contrary conclusion. Neither of the two prisoners whose suits under the Federal Tort Claims Act were upheld in *Muniz* was eligible for compensation under Section 4126 since in neither case were the alleged injuries work-connected. Thus the exclusivity of Section 4126 as a remedy for injuries within its coverage was neither presented nor decided in *Muniz.* The Court did not purport to reconsider the rule laid down in *Johansen* v. *United States,* 343 U.S. 427, and reaffirmed in *Patterson* v. *United States,* 359 U.S. 495.

Relying on language in *Muniz,* the court below found that the system of compensation for prisoners was

not sufficiently comprehensive to be deemed exclusive even for claims within its coverage. It seems doubtful that comprehensiveness has any relevance in determining the exclusivity of compensation as a remedy for injuries which are undeniably comprehended. But in any event the court of appeals was mistaken in its appraisal of the system of compensation established under Section 4126. That system is not distinguishable from typical workmen's compensation systems in terms of breadth of coverage, measure of benefits provided or other essential features. The court below erred, therefore, in failing to recognize that, like other compensation systems, Section 4126 affords an exclusive remedy.

ARGUMENT

INTRODUCTION

The judgment below permits a federal prisoner eligible for workmen's compensation benefits from the United States for injuries incurred in prison employment to seek additional recovery from the United States by means of a suit in tort. That decision departs from settled law in two important respects: *First,* it ascribes to Congress the intent to afford a greater remedy to prisoners than to any other class of federal employees (the latter being limited to administrative compensation benefits as their exclusive remedy against the United States for work-connected injuries); *second,* it contravenes the cardinal principle of workmen's compensation legislation—that the obligation to provide compensation benefits without regard to fault or contributory negligence is in lieu of,

and not in addition to, tort liability for injuries within the coverage of the compensation program. In concluding that Congress intended to provide a unique and additional remedy for federal prisoners, we submit that the court below erred.

I

THE COURT OF APPEALS DISREGARDED THE ESTABLISHED PRINCIPLE THAT, WITHIN THE SCOPE OF THEIR COVERAGE, FEDERAL COMPENSATION REMEDIES ARE PRESUMPTIVELY EXCLUSIVE OF OTHER FORMS OF RELIEF AGAINST THE UNITED STATES

The fundamental feature of workmen's compensation is its assurance that an employee injured at work will not be faced with a sudden loss of income if disabled. For where applicable, compensation benefits, unlike tort recoveries, are payable without resort to a *post hoc* assessment of fault or contributory negligence and without the delays, uncertainties, and legal expenses attendant upon tort litigation. The advantages in an industrial society of such an administrative remedy involving liability without fault for work-connected injuries has led to its widespread substitution for traditional, common law remedies. Employers have received in return insulation against the possibility of large tort judgments in those cases where the employee could have established the employer's negligence. Wherever it has been adopted, the exclusivity of the compensation remedy for on-the-job injuries is established as "the general rule." *Mandel* v. *United States*, 191 F. 2d 164, 166 (C.A. 3),

affirmed *sub nom. Johansen* v. *United States,* 343 U.S. 427.[12]

Congress passed the Federal Employees' Compensation Act in 1916.[13] It has subsequently been extended to protect almost every civilian officer and employee of all three branches of the federal government, including members of Congress and the federal judiciary.[14] By separate enactments Congress has given similar protection to those few persons who, for one reason or another, are not within the reach of F.E.C.A.[15] Thus Congress

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[12] See 2 Larson, *Workmen's Compensation Law* (1961 ed.) § 65.10: "Once a workmen's compensation act has become applicable through compulsion or election, it affords the exclusive remedy for the injury. This is part of the *quid pro quo* in which the sacrifices and gains of the employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts."

[13] Act of September 7, 1916, ch. 458, 39 Stat. 742 (5 U.S.C. 751 *ff*).

[14] The Act of October 14, 1949, ch. 691, Title 1, § 108, 63 Stat. 860, now 5 U.S.C. 790(b)(1), amended the definition of employee for purposes of the act to include coverage for: "all civil officers and employees of all branches of the Government of the United States." This amendment eliminated the former distinction between "employees," who were covered, and "officers," who were not. See H. Rep. 729, 81st Cong., 1st Sess., p. 4; S. Rep. No. 836, 81st Cong., 1st Sess., pp. 14–15, 21. As the bill passed the House, it expressly excluded "Members of Congress [from] coverage." See S. Rep. No. 836, *supra*, p. 6. The Senate struck that exclusion from the bill and the House concurred in the Senate amendment. 95 Cong. Rec. 13606. See, Bureau of Employees' Compensation, Department of Labor, Awards Nos. X–1219981 and X–534580.

[15] *E.g.*, United States Park Police in the District of Columbia are covered by D.C. Code (1961 ed.) § 4–521 *ff.*; civilians employed by post exchanges, officers' messes, and other nonappropriated fund activities of the Armed Forces come under

has provided "systems of simple, certain, and uniform compensation for injuries or death of those in armed services" (*Feres* v. *United States*, 340 U.S. 135, 144; see 38 U.S.C. 301 *et seq.*). In common with the general rule under workmen's compensation legislation, the benefits thus afforded federal employees are paid without regard to fault or contributory negligence. And also in accord with general workmen's compensation precepts, these compensation remedies represent the exclusive avenue of relief against the United States for all persons eligible as a result of work-related injuries.

While certain federal compensation acts now expressly provide that the liability of the United States thereunder is exclusive of any other remedy,[16] this Court made clear in *Johansen* v. *United States*, 343 U.S. 427, that exclusivity was presumed without an explicit congressional declaration to that effect. *Johansen* involved two suits in behalf of government seamen injured in the course of their duties as civilian members of the crew of Army troop transports. Although each was concededly eligible for benefits under the Federal Employees' Compensation Act,

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5 U.S.C. 150k and 150k–1. See, *Rizzuto* v. *United States*, 298 F. 2d 748 (C.A. 10); *Lowe* v. *United States*, 292 F. 2d 501 (C.A. 5); *United States* v. *Forfari*, 268 F. 2d 29 (C.A. 9), certiorari denied, 361 U.S. 902; *Aubrey* v. *United States*, 254 F. 2d 768 (C.A.D.C.); *Lewis* v. *United States*, 190 F. 2d 22 (C.A.D.C.), certiorari denied, 342 U.S. 869.

[16] See 5 U.S.C. 757(b), added in 1949 to the Federal Employees' Compensation Act, 63 Stat. 861, and 5 U.S.C. 150k–1(c), added in 1958 to the act covering employees of nonappropriated fund activities, 72 Stat. 397.

they brought suit for damages against the United States under the Public Vessels Act[17] alleging that their injuries resulted from the government's negligence or the unseaworthiness of its vessel. Nothing in the Public Vessels Act precluded suit by those eligible for relief under the Compensation Act. And nothing in the language of the Compensation Act specified that liability thereunder to those within its coverage was exclusive.[18] Nevertheless, this Court agreed with the Second[19] and Third Circuits[20] that the benefits provided by the Compensation Act were the only remedy Congress had intended to provide the seamen, expressly disapproving two contrary Fourth Circuit holdings.[21]

The Court reasoned that, in passing the Public Vessels Act, Congress intended to waive the sovereign immunity of the United States from suit for the benefit of those who had theretofore been remediless when their persons or property were tortiously injured by federal employees. But Congress had previously provided federal employees with a compensation remedy. Finding no indication that any member

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[17] 43 Stat. 1112, as amended, 46 U.S.C. 781 *ff.*

[18] Congress added an exclusivity provision in 1949 after the injuries in question had occurred, 63 Stat. 861, 5 U.S.C. 757(b). Even that provision, however, was by its terms inapplicable "to a master or member of the crew of any vessel" and thus could not in any event determine the rights of the petitioners in *Johansen.*

[19] *Johansen* v. *United States*, 191 F. 2d 162.

[20] *Mandel v. United States*, 191 F. 2d 164.

[21] *Johnson* v. *United States*, 186 F. 2d 120, and *United States* v. *Marine*, 155 F. 2d 456. See 343 U.S. at 427.

of Congress thought the Public Vessels Act might confer additional rights on employees entitled to such benefits (343 U.S. at 431–432), the Court concluded that the "systems of simple, certain and uniform compensation for injuries or death" provided for federal employees were presumably exclusive, and that where "the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." *Id.* at 343 U.S. 440-441.

In *Johansen,* the Court noted that it had previously "accepted the principle of the exclusive character of federal plans for compensation in *Feres* v. *United States,* 340 U.S. 135" (343 U.S. at 440). That case held that no suit under the Federal Tort Claims Act would lie on behalf of a soldier injured incident to his service even though neither the Tort Claims Act nor the applicable federal compensation statutes in terms proscribed dual means of redress. And, in *Patterson* v. *United States,* 359 U.S. 495, the Court declined to overturn its ruling in *Johansen.* Instead, it reaffirmed that earlier decision and reemphasized its previous disapproval of a Fourth Circuit decision allowing recovery under the Suits in Admirality Act [22] to a federal employee eligible for compensation benefits.[23] The Court reiterated (359 U.S. at 496):

> The United States "has established by the Compensation Act a method of redress for its

[22] 46 U.S.C. 741 *ff.*

[23] See 359 U.S. at 496, n. 1.

employees. There is no reason to have two systems of redress."[24]

The lower federal courts have similarly adhered to the principle that federal plans for workmen's compensation are presumptively exclusive. They have held, uniformly, that persons for whom the government has supplied an administrative compensation remedy are precluded from seeking recovery against the United States for injuries received in the course of their work under the Federal Tort Claims Act, the Jones Act,[25] the Suits in Admiralty Act, or the Public Vessels Act. *Jarvis* v. *United States,* 342 F. 2d 799 (C.A. 5), certiorari denied, 382 U.S. 831; *Rizzuto* v. *United States,* 298 F. 2d 748 (C.A. 10); *Lowe* v. *United States,* 292 F. 2d 501 (C.A. 5); *Somma* v. *United States,* 283 F. 2d 149 (C.A. 3); *Mills* v. *Panama Canal Co.,* 272 F. 2d 37 (C.A. 2), certiorari denied, 362 U.S. 961; *United States* v. *Forfari,* 268 F. 2d 29 (C.A. 9), certiorari denied, 361 U.S. 902; *Balancio* v. *United States,* 267 F. 2d 135 (C.A. 2), certiorari denied, 361 U.S. 875; *Aubrey* v. *United States,* 254 F. 2d 768 (C.A.D.C.); *United States* v. *Firth,* 207 F. 2d 665 (C.A. 9); *Lewis* v. *United States,* 190 F. 2d 22 (C.A.D.C.), certiorari denied, 342 U.S. 869. See also, *Gradall* v. *United States,* 329 F. 2d 960, 963 (Ct. Cls.),

[24] In *Amell* v. *United States*, 384 U.S. 158, 160–161, the Court again noted that the recovery of seamen employed by the federal government "is limited strictly by a workmen's compensation statute governing them as federal workers to the exclusion of both the Public Vessels Act, *Johansen* v. *United States*, 343 U.S. 427, and the Suits in Admiralty Act, *Patterson* v. *United States*, 359 U.S. 495."

[25] 46 U.S.C. 688.

and *Denenberg* v. *United States*, 305 F. 2d 378, 379–380 (Ct. Cls.).

In short, it is not now open to serious dispute that all other compensation remedies provided by Congress for work injuries are exclusive. *Granade* v. *United States*, 356 F. 2d 837, 840–841 (C.A. 2). Neither soldiers nor Senators, janitors nor judges, injured in the course of federal employment may seek tort recovery against the government for such injuries.[26] As we show in the next point, there is no reason to construct an exception to that rule for the sole benefit of federal prisoners.

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[26] *United States* v. *Brown*, 348 U.S. 110, and *Brooks* v. *United States*, 337 U.S. 49, cited by the court below (R. 30–31) are not authority to the contrary. Unlike the case at bar, those cases did not involve injuries incurred in the course of employment for which workmen's compensation was provided. Rather, they involved the right of servicemen to bring suit under the Federal Tort Claims Act for injuries they incurred off duty or after discharge. *Brown* involved a veteran injured after his release from active duty. Although relief was available under veterans' benefit statutes, the Court distinguished such benefits from the usual workmen's compensation remedy. 348 U.S. at 113. The Court stressed that for injuries to servicemen that did arise incident to their service no Tort Claims Act suit would lie. *Ibid.* In *Brooks*, involving soldiers injured on furlough, the Court specifically noted: "Were the accident incident to the Brooks' service, a wholly different case would be presented." 337 U.S. at 52. When in *Feres* v. *United States*, 340 U.S. 135, military personnel sought to recover under the Tort Claims Act for injuries which were incident to their service, the Court held that such actions would not lie, stating (340 U.S. at 138): "This is the 'wholly different case' reserved from our decision in *Brooks* v. *United States*, 337 U.S. 49, 52."

II

CONGRESS INTENDED COMPENSATION UNDER 18 U.S.C. 4126 TO BE AN EXCLUSIVE REMEDY

The court of appeals took the position that, where a compensation program is intended to be exclusive, "it is to be expected that Congress will express such intention in the compensation statute" (R. 28). We submit, however, that silence will not support the inference that the court of appeals sought to draw from it, and that this is particularly clear in light of the context in which Section 4126 was first adopted and later amended.

Payment of compensation "to inmates of penal institutions or their dependents for injuries suffered in any industry" was first authorized by Congress in 1934 as part of the legislation creating Federal Prison Industries, Inc.[27] Congress did not specify that such compensation payments were to be the exclusive remedy for such injuries for the obvious reason that no alternative remedy was even potentially available in 1934—twelve years before the enactment of the Federal Tort Claims Act. Omission of reference to exclusivity in the 1934 legislation cannot be distinguished from the similar omission in the Federal Employees Compensation Act of 1916, as to which the Court noted in *Johansen* v. *United States*, 343 U.S. 427, 433:

> It is quite understandable that Congress did not specifically declare that the Compensation Act

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[27] Act of June 23, 1934, ch. 736, Sec. 4, 48 Stat. 1211-1212. The Federal Prison Industries was established as a District of Columbia corporation and a "governmental body" to expand an industrial training and rehabilitation program for prisoners initiated by the Act of May 27, 1930, ch. 340, 46 Stat. 391.

> was exclusive of all other remedies. At the time of its enactment, it was the sole statutory avenue to recover from the Government for tortious injuries received in Government employment. Actually, it was the only, and therefore the exclusive, remedy.

In short, contrary to the view of the court of appeals, it was hardly to be expected that Congress should explicitly preclude alternative remedies at a time when no such remedies existed.

The prisoner compensation provision of Section 4126 remained unchanged from 1934 to 1961. In 1961 Congress expanded the coverage of Section 4126 so as to include not only prisoners' injuries suffered in "any industry" but also in "any work activity in connection with the maintenance or operation of the institution where confined."[28] Notwithstanding the enactment of the Federal Tort Claims Act in 1946, the 1961 amendment of Section 4126 was adopted under circumstances warranting Congress's assumption that prisoners not qualifying for compensation were entirely without remedy if injured at work. A substantial number of federal courts had ruled that prisoners could not recover from the United States under the Federal Tort Claims Act.[29] There were no con-

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[28] Act of September 26, 1961, 75 Stat. 681, 18 U.S.C. 4126.

[29] See, *James* v. *United States*, 280 F. 2d 428 (C.A. 8), certiorari denied, 364 U.S. 845; *Lack* v. *United States*, 262 F. 2d 167 (C.A. 8); *Jones* v. *United States*, 249 F. 2d 864 (C.A. 7); *Berman* v. *United States*, 170 F. Supp. 107 (E.D.N.Y.); *Golub* v. *United States*, Civ. No. 148–117, S.D.N.Y. (October 5, 1959); *Collins* v. *United States*, No. T–1509, D. Kan. (Jan. 29, 1958); *Trostle* v. *United States*, No. 1493, W.D. Mo. (Feb. 20, 1958);

trary holdings. It was not until 1963 that this Court held that the claims of prisoners were not barred as such under the Tort Claims Act. *United States* v. *Muniz,* 374 U.S. 150. Moreover, private bills for the relief of prisoners injured while engaged in maintenance work were passed by Congress in light of advice from the Department of Justice that such prisoners not only were outside the coverage of Section 4126 because not engaged in prison industries but also had "no standing to sue the U.S. Government * * * under the Federal Tort Claims Act." [30]

In light of the apparent absence of any remedy (other than private legislation) for prisoners injured in maintenance or operational work, in 1961 Attorney General Kennedy sought legislation affording such prisoners "the same compensation provisions as are applicable to inmates employed by Federal Prison Industries." [31] The Attorney General's proposal was accepted by Congress without debate.[32] Nevertheless, it is perfectly clear from the only pertinent legislative history, the House Judiciary Com-

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Van Zuch v. *United States*, 118 F. Supp. 468 (E.D.N.Y.); *Shew* v. *United States*, 116 F. Supp. 1 (M.D.N.C.); *Sigmon* v. *United States*, 110 F. Supp. 906 (W.D. Va.); *Ellison* v. *United States*, No. 1003, W.D.N.C. (July 26, 1951).

[30] S. Rep. No. 1944, 86th Cong., 2d Sess. (1960) (accompanying H.R. 9715, which became Act of September 14, 1960, 74 Stat. A101). See, also, S. Rep. No. 1180, 87th Cong., 2d Sess. (1962) (accompanying H.R. 4381, which became Act of February 16, 1962, 76 Stat. 1266).

[31] See, H. Rep. No. 534, 87th Cong., 1st Sess., p. 3; S. Rep. No. 1056, 87th Cong., 1st Sess., p. 3.

[32] 75 Stat. 681.

mittee Report,[33] that Congress acted on the assumption, consistent with the uniform view of every court which had then considered the matter, that no remedy was available under the Federal Tort Claims Act, and that the compensation program authorized by Congress was an exclusive remedy. The report stated the purpose of the bill to be that of extending "equivalent compensation" to prisoners injured while working in activities other than those of Federal Prison Industries. Such extension was necessary because:

> Presently there is no way under the general law to compensate prisoners injured while so engaged. Their only recourse has been to appeal to Congress, and this committee has reported numbers of private relief bills for such prisoners.[34]

There can be no doubt, therefore, that, in the contemplation of Congress, the compensation program which it was thus expanding did not accord (any more than any other federal compensation program) a dual remedy for workmen's injuries. Indeed, the retention of the proviso to Section 4126 that "[i]n no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act" confirms the overwhelmingly plausible assumption that Congress had no purpose to treat prisoners more favorably than federal employees generally.

In sum, nothing in the legislative history of Section 4126 indicates any congressional intent to depart

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[33] H. Rep. No. 534, 87th Cong., 1st Sess., pp. 1–2.

[34] *Id.* at p. 2.

from "the principle of the exclusive character of federal plans for compensation" affirmed by the Court in *United States* v. *Johansen,* 343 U.S. 440, and *Patterson* v. *United States,* 359 U.S. 495. The Court pointed out in *Patterson* that it would not readily be moved to reverse the doctrine of *Johansen* since "Congress can rectify our mistake, if such it was, or change its policy at any time" (359 U.S. at 496). But Congress has never indicated that it was not in complete accord with *Johansen.* In extending the coverage of compensation for prisoners in Section 4126 Congress quite plainly assumed that *Johansen* and *Patterson* were "part of the arch on which the new structure rests"; the Court should, therefore, "refrain from disturbing them lest [it] change the design that Congress fashioned." *State Bd. of Ins.* v. *Todd Shipyards,* 370 U.S. 451, 458.[35]

Notwithstanding the evidence that Congress intended Section 4126 as an exclusive remedy for those within its coverage, the court of appeals felt constrained by this Court's recent decision in *United States* v. *Muniz,* 374 U.S. 150, to allow additional relief under the Federal Tort Claims Act. For the reason given below, however, it is apparent that *Muniz* neither requires nor foreshadows such a result.

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[35] See, also, *United States* v. *Philadelphia National Bank,* 374 U.S. 321, 340, n. 17, 349; *Davis* v. *Department of Labor* 317 U.S. 249; *Toolson* v. *New York Yankees, Inc.,* 346 U.S. 356; cf. *United States* v. *Dixon,* 347 U.S. 381; *Overstreet* v. *North Shore Corp.,* 318 U.S. 125, 131–132.

III

UNITED STATES V. *MUNIZ* DID NOT OVERTURN THE RULE THAT FEDERAL COMPENSATION REMEDIES ARE PRESUMPTIVELY EXCLUSIVE, NOR DID IT EXEMPT PRISONER COMPENSATION UNDER 18 U.S.C. 4126 FROM THAT RULE

The court of appeals believed that the reasoning of this Court's decision in *United States* v. *Muniz*, 374 U.S. 150, required it to allow a tort remedy to a prisoner eligible for compensation benefits under 18 U.S.C. 4126. Analysis of *Muniz* makes it apparent, however, that the Second Circuit was correct in concluding "that the Third Circuit in *Demko* misinterpreted the opinion of the Court in *Muniz*." *Granade* v. *United States*, 356 F. 2d 837, 842.[36]

1. Whether a prisoner eligible for compensation benefits may also claim additional rights against the United States under the Tort Claims Act was an issue neither presented to, nor decided by, the Court in *Muniz*. The case held that an inmate of a federal prison, claiming to have suffered injury from the negligent acts of prison officials, is not barred from suing the United States under the Tort Claims Act solely by reason of his status as a prisoner. But, as the Court recognized (374 U.S. at 160), neither Muniz nor his co-

[36] We note that the author of the *Granade* opinion was a member of the majority in the *en banc* decision in *Winston* v. *United States*, 305 F. 2d 253, 264, which was affirmed by this Court *sub nom. United States* v. *Muniz*, *supra*, and that one of the judges concurring in *Granade* was the author of that *en banc* opinion.

petitioner, Winston, was eligible for compensation under 18 U.S.C. 4126 for the injuries which he allegedly suffered in prison. (Muniz was assaulted by other inmates during the course of a prison riot; Winston alleged malpractice on the part of prison medical officials.)

Certiorari was granted in *Muniz,* the Court stated (374 US at 151, n. 3), to resolve a conflict between the holding of the Second Circuit in *Winston* v. *United States,* 305 F. 2d 253, [illegible], allowing prisoners suits under the Federal Tort Claims Act, and contrary decisions of the Seventh and Eighth Circuits barring such suits by reason of the prisoner status alone. *James* v. *United States,* 280 F. 2d 428 (C.A. 8), certiorari denied, 364 U.S. 845; *Lack* v. *United States,* 262 F. 2d 167 (C.A. 8); *Jones* v. *United States,* 249 F. 2d 864 (C.A. 7). In none of these conflicting Seventh and Eighth Circuit cases were the prisoners who sought relief under the Tort Claims Act eligible for federal compensation benefits.[37] In short, the Court had no occasion to pass upon the issue here presented.

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[37] Plaintiff in *Jones v. United States*, 249 F. 2d 864 (C.A. 7) was confined in District of Columbia penal institutions, beyond the reach of 18 U.S.C. 4126. In *Lack* v. *United States*, 262 F. 2d 167 (C.A. 8), the plaintiff was injured while engaged in a type of work which, as the Eighth Circuit expressly noted, at that time was not covered by 18 U.S.C. 4126. See 262 F. 2d at 169. Plaintiff's complaint in *James* v. *United States*, 280 F. 2d 428 (C.A. 8), alleged that he was injured when he "was deliberately attacked in the corridor of floor 1–3 by inmate Chapman, No. 8728." Thus, like Muniz, James was not injured in the course of employment and therefore was not covered by 18 U.S.C. 4126.

2. To be sure, this Court did say in Muniz that "the presence of a compensation system, persuasive in *Feres,* does not of necessity preclude a suit for negligence" (374 U.S. 150, 160). While the court of appeals apparently found this language compelling, we agree with the Second Circuit [37a] that the statement is to be understood in relationship to the argument advanced in that case that a sufficiently comprehensive compensatory scheme may, in effect, occupy the field so as to oust all other remedies even for unincluded injuries. It was in this context that the Court went on to point out that

> * * * the compensation system in effect for prisoners in 1946 was not comprehensive. It provided compensation only for injuries incurred while engaged in prison industries. Neither Winston nor Muniz would have been covered. [374 U.S. at 160. Footnote omitted.]

The proposition that the mere presence of a compensation system does not preclude a suit by one ineligible for its benefits does not entail the conclusion that a suit for negligence is afforded one who is eligible for and has received compensation benefits. The right to bring a tort suit against an employer for an injury that is non-compensable under workmen's compensation because not work-connected is entirely consistent with the exclusive character of workmen's compensation within the scope of its coverage. See *United States* v. *Browning,* 359 F. 2d 937 (C.A. 10); *Canon* v. *United States,* 111 F. Supp. 162, 167 (N.D. Cal.), affirmed, 217 F. 2d 70 (C.A. 9); 2 Larson,

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[37a] *Granade* v. *United States, supra,* 356 F. 2d at 841–842.

Workmen's Compensation Law (1961 ed.) § 65.10. Demko, unlike Muniz and Winston, had a workmen's compensation remedy because his injuries were sustained in the course of prison work activities.

It seems evident that in *Muniz* the Court's attention was focused on issues entirely distinct from those which it resolved in *Johansen* and *Patterson*. Not unexpectedly, the Court made no attempt to distinguish those cases.[28] In these circumstances, we submit that the court of appeals erred in reading *United States* v. *Muniz* as abandoning, *sub silentio*, the carefully considered position which this Court had reaffirmed but a few terms earlier in *Patterson*.

3. Relying on its interpretation of *Muniz*, the court of appeals found (R. 28–31) that Section 4126 involved a compensation program not sufficiently comprehensive to warrant the presumption of exclusivity recognized by this Court in *Johansen* and *Patterson*. It is far from clear what relevance comprehensiveness has in considering a compensable injury. While comprehensiveness of coverage was certainly relevant to the question, faced in *Muniz*, whether prisoners are invariably barred from access to all tort remedies, it seems wide of the mark where the question is the availability of an additional remedy for a concededly compensable injury. It is true of compensation acts generally that, where an injury is not covered because it is not work-connected, no immunity from tort suit is

[28] Indeed, in *Muniz* the Court made no mention of *Patterson* at all and cited *Johansen* in a single footnote relating to a collateral issue. 374 U.S. at 155, n. 9.

afforded the employer.[39] Conversely, where compensation benefits are available, the compensation statutes provide the exclusive means of relief.[40] There is no reason to adopt a different approach in interpreting 18 U.S.C. 4126.

In addition, we believe that the court of appeals was mistaken in its appraisal of the program. Section 4126 affords protection to any inmate injured in the course of employment. Specifically, it provides compensation for "injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution where confined." The scope of the section is thus "comprehensive" in the same sense any workmen's compensation statute is comprehensive; it provides redress for those injuries which arise out of work situations. Workmen's compensation legislation normally does not, and is not intended to, compensate injuries unrelated to work or incurred off duty. Thus, the Federal Employees' Compensation Act covers injuries "sustained while in the performance of * * * duty" (5 U.S.C. 751(a)). The Longshoremen's and Harbor Workers' Act similarly only protects against employment accidents,[41] as do State workmen's compensation schemes.[42] In short, Section 4126 cannot be distinguished from other

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[39] 2 Larson, *Workmen's Compensation Law* (1961 ed.) § 65.10.

[40] *Cifolo* v. *General Electric Co.*, 305 N.Y. 209, 112 N.E. 2d 197; the cases cited at pp. 11–17, *supra;* and 2 Larson, *Workmen's Compensation Law* (1961 ed.) § 65.00.

[41] 33 U.S.C. 902(2).

[42] See, *e. g.*, *New York Workmen's Compensation Law* § 10 (emphasis added):

> Every employer subject to this chapter shall in accordance

workmen's compensation programs in terms of the category of accidents covered.

Nor can the prisoner compensation program be distinguished from other forms of workmen's compensation on the basis of the measure of the benefits conferred. Respondent was totally disabled as a result of an employment accident at the Lewisburg Penitentiary in Pennsylvania. In compensation for that disability he was awarded benefits under 18 U.S.C. 4126 of $180.00 per month (R. 7).[43] Had respondent been been similarly disabled in private rather than prison employment, he would have received a fairly comparable award under the workmen's compensation law of Pennsylvania, his home State. The *maximum* workmen's compensation award for permanent total disability in Pennsylvania is $47.50 per week, provided that the injured employee's wages exceeded $71.00 weekly.[44] Lesser earnings would reduce that award under Pennsylvania law to as little as $20.00 per week.[45] But such compensation would also have been respondent's exclusive remedy, for no tort ac-

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with this chapter * * * secure compensation to his employees and pay or provide compensation for their disability or death *from injury arising out of and in the course of the employment* without regard to fault as a cause of the injury * * *.

See also 1 Larson, *Workmen's Compensation Law* (1965 ed.) § 20.

[43] That figure represents the minimum monthly amount then specified in the Federal Employees' Compensation Act, 5 U.S.C. (1964 ed.) 756(c). Section 4126 provides that: "In no event shall compensation be paid in a greater amount than that provided in the Federal Employees' Compensation Act."

[44] Purdon's Penna. Stat. Ann., Title 77 (1965 Cum. Ann. Pocket Part), § 511.

[45] *Ibid.*

tion lies against a Pennsylvania employer where the employee is eligible for compensation benefits.[46]

While respondent's redress under the workmen's compensation scheme of Pennsylvania would be about the same as his remedy under 18 U.S.C. 4126, most other jurisdictions are not so generous. The award of $180.00 per month to respondent is greater than the maximum workmen's compensation award provided workers generally for total disability in fully half the States; it exceeds the minimum award in all of them.[47] Moreover, unlike restrictions contained in the workmen's compensation legislation of twenty-four States, there is no arbitrary limit on the period during which compensation is payable under 18 U.S.C. 4126.[48] Nor is there any fixed maximum total compensation which may be paid. Thus, if respondent

[46] Purdon's Penna. Stat. Ann., Title 77, § 481; *Steets* v. *Sovereign Const. Co.*, 413 Pa. 458, 198 A. 2d 590. Absent a written agreement to the contrary made at the time of employment, under Pennsylvania law it is conclusively presumed that the workmen's compensation act applies to an employment relationship. Purdon's Penna. Stat. Ann., Title 77, §§ 461, 462.

[47] For example, the minimum and maximum weekly compensation benefits payable in cases of permanent total disability in the following States are as follows: Alabama, $5.00–31.00; California, $20.00–52.50; Colorado, $10.00–40.25; District of Columbia, $18.00–54.00; New Jersey, $10.00–40.00; New York, $20.00–50.00; Ohio, $40.25–49.00; Texas, $9.00–35.00; Washington, $28.85–56.77 (with five dependents, plus allowance of $75.00 for constant attendant, if necessary). A complete table of the weekly maximum and minimum compensation benefits payable in each State in cases of permanent total disability appears in 2 Larson, *Workmen's Compensation Law* (1961 ed.), pp. 524–526.

[48] See 2 Larson, *op. cit. supra*, n. 47.

were to continue receiving the benefits awarded him for twenty-five years,[49] he would receive in total some $54,000.00. This figure is more than double—in some cases quadruple—the maximum compensation benefits payable in twenty-eight States.[50]

Other benefits provided in the regulations under Section 4126 are similarly in accord with workmen's compensation programs generally. For example, all necessary medical, surgical and hospital care is provided without cost to an inmate injured at work not only while he remains incarcerated, but after discharge as well;[51] prisoners hurt in the course of paid employment with Federal Prison Industries, Inc., continue to draw their pay while disabled;[52] and provision is made for lump-sum payments as well as for awards to dependents.[53] There is thus no merit to the view that the remedy under 18 U.S.C. 4126 is not comparable to that commonly afforded by workmen's compensation.

Concededly, the court below correctly observed that compensation is paid only upon an inmate's release from prison and is denied if he recovers while still in

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[49] Respondent was born October 21, 1929, and was 34 years old when he commenced receiving compensation benefits in 1963.

[50] *E.g.*, the total *maximum* compensation for permanent total disability in Alabama is $12,400; in Arkansas, $12,500; in Colorado, $12,598.25; in Georgia, $10,000; in New Hampshire, $13,640; in Rhode Island, $16,000. See 2 Larson, *op. cit. supra*, n. 47.

[51] 28 C.F.R. § 301.8, Compensation Pamphlet ¶¶ 2, 17 (R. 13, 18).

[52] 28 C.F.R. § 301.1, Compensation Pamphlet ¶ 11 (R. 17).

[53] 28 C.F.R. §§ 301.3, 301.9; Compensation Pamphlet, ¶¶ 14, 15 (R. 17–18).

prison and is not disabled upon discharge.[54] But there is nothing untoward in such a rule. Workmen's compensation benefits are intended to make up for loss of earnings; they are not payable after the disability has ceased and wage-earning capacity has been fully restored. It is hardly necessary to point out that a disability is of no economic significance to a prisoner during the period of his incarceration, since he is provided with food, clothing, shelter and medical attention.[55] The economic loss which Section 4126 is designed to insure against is precisely that resulting from a disability acquired in prison but persisting after discharge. The same reasons, of course, explain the cut-off of compensation payments to reincarcerated prisoners. The court below failed to note, however, that even in such cases compensation can still be paid to the dependents of a recommitted inmate.[56]

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[54] 28 C.F.R. §§ 301.1, 301.2, Compensation Pamphlet ¶ 16 (R. 18).

[55] As we pointed out above, p. 30, those inmates injured in paid prison jobs do continue to receive their wages while disabled. 28 C.F.R. § 301.1, Compensation Pamphlet ¶ 11.

[56] 28 C.F.R. § 301.5, Compensation Pamphlet ¶ 16 (R. 18). While not relied on by the court below, we note that benefits under 18 U.S.C. 4126 are not payable if the injury is caused by the willful misconduct of the inmate himself. 28 C.F.R. § 301.4, Compensation Pamphlet ¶ 10 (R. 16). But this is a limitation generally found under workmen's compensation statutes. Thus similar provisions restrict awards under the Federal Employees' Compensation Act, 5 U.S.C. 751(a) and under State workmen's compensation statutes, *e.g.*, New York Workmen's Compensation Law § 10. See 1 Larson, *Workmen's Compensation Law* (1965 ed.) §§ 32.00–32.20.

The court of appeals further found the prisoner compensation program inadequate in that the regulations provide "no opportunity for administrative review" (R. 29). Insofar as the court's concern was based upon its apprehension that compensation awards were subject to the same "dominion which was at the origin of the inmate's injury" (R. 29), it appears that the court mistakenly assumed that the officials directly supervising the working inmates were also responsible for deciding whether a compensation award would be made. In fact, however, the administrators of Federal Prison Industries in Washington, D.C., and not local prison officials, are responsible for the administration of the compensation program and the allowance of awards (R. 14, 15).

In any event, the availability of formal review is not a prerequisite to the exclusivity of a remedy. The Federal Employees Compensation Act, long recognized as an exclusive remedy for those within its coverage, explicitly provides (5 U.S.C. 793):

> * * * The action of the Secretary or his designees in allowing or denying any payment * * * shall be final and conclusive for all purposes and with respect to all questions of law and fact, and not subject to review by any other official of the United States, or by any court by mandamus or otherwise * * *.

In affirming the dismissal of a claim under the Compensation Act for want of jurisdiction, the Second Circuit wrote in *Blanc* v. *United States*, 244 F. 2d 708, 710, certiorari denied, 355 U.S. 874:

> Though it may be informal, agency action which amounts to a genuine, fair consideration

> of a claim for benefits and not merely an arbitrary flouting of it, satisfies constitutional requirements and precludes further court review.[57]

There has been no suggestion that the consideration of prisoners' claims for compensation under 18 U.S.C. 4126 have been lacking in fundamental fairness.

Finally, the court of appeals attached importance to the fact that, although it authorize the establishment of a compensation program for prisoners, Section 4126 is "permissive rather than mandatory" (R. 28). This objection was fully answered in *Granade* v. *United States*, 356 F. 2d 837, 843. The Second Circuit there noted that, while Section 4126 neither explicitly requires that a compensation system be established nor specifies the mode of its operation,

> * * * nevertheless a compensation scheme has been established and embodied in regulations. This system of compensation does not become less than comprehensive simply because the details of the system are spelled out in regulations rather then in the authorizing statute. And an examination of the regulations makes it quite clear that an award of compensation under Section 4126 is not discretionary but is mandatory as to any claim that comes within their terms.

Section 4126 is not unique among compensation systems in leaving implementation to administrative reg-

[57] See, also, *Soderman* v. *United States Civil Service Commission*, 313 F. 2d 694 (C.A. 9), certiorari denied, 372 U.S. 968; *Rivera* v. *Mitchell*, 244 F. 2d 783 (C.A.D.C.), certiorari denied, 355 U.S. 862; *Hancock* v. *Mitchell*, 231 F. 2d 652 (C.A. 3); *Calderon* v. *Tobin*, 187 F. 2d 514 (C.A.D.C.), certiorari denied, 341 U.S. 935.

ulation. The compensation provision for employees of certain military establishments operating on non-appropriated funds under 5 U.S.C. 150k–1 [58] has uniformly been held to be exclusive although, until its amendment in 1958,[59] the details of its operation were left to administrative regulation.[60]

Although the prisoner compensation program has now operated for three decades under regulations promulgated by the Attorney General, Congress has never indicated that the conduct of the program was in conflict with its purposes or unsatisfactory in any other respect. On the contrary, as noted above (see pp. 19–21, *supra*), Congress expanded the coverage of Section 4126 so as to provide compensation for prisoners injured while engaged in maintenance or operational work *"to the same extent* as compensation is now payable to inmates or their dependents for injuries suffered while engaged in work for Federal Prison Industries." [61] In other words, while expanding the coverage of the system, Congress indicated no interest in altering the mode of operation or increasing the

[58] 66 Stat. 139.

[59] 72 Stat. 397.

[60] See *Rizzuto* v. *United States*, 298 F. 2d 748 (C.A. 10); *Lowe* v. *United States*, 292 F. 2d 501 (C.A. 5), affirming 185 F. Supp. 189 (N.D. Miss.); *United States* v. *Forfari*, 268 F. 2d 29 (C.A. 9), certiorari denied, 361 U.S. 902; *Aubrey* v. *United States*, 254 F. 2d 768 (C.A.D.C.). While it is true that even before the 1958 amendment, Section 150k–1 provided for compensation not less than that provided in the State where the employees worked, the Second Circuit found that "with this exception, old Section 150k–1 was no more detailed than is Section 4126." *Granade* v. *United States*, 356 F. 2d at 843, n. 11.

[61] H. Rep. No. 534, 87th Cong., 1st Sess. (1961), p. 1 (emphasis added).

benefits awarded. The conclusion that Congress was fully satisfied with the administration of the system under the Attorney General's regulations is further substantiated by the private bills enacted for the relief of injured prisoners not within the coverage of Section 4126 as it stood prior to 1961. Such bills commonly provided for payment of an amount determined in accordance with the regulations for those within the coverage of Section 4126.[62]

In sum, the compensation remedy afforded under 18 U.S.C. 4126 is not materially distinguishable from the usual relief furnished under workmen's compensation schemes. The court of appeals erred, we submit, in departing from the established rule which holds such remedies, where applicable, exclusive.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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[62] See, *e.g.*, S. Rep. 1180, 87th Cong., 2d Sess. (1962), p. 3; S. Rep. No. 1192, 87th Cong., 2d Sess., pp. 1–2.

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